

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE NO. 161 OF 1984

WITH

INCOME TAX REFERENCE NO. 56 OF 1985

For Approval of Signature :

Hon'ble MR. JUSTICE B.C. PATEL and Sd/-

MR. JUSTICE R.R. JAIN Sd/-

1. Whether Reporters of Local Papers may be allowed
to see the judgments ? Yes

2. To be referred to the Report or not ? No

3. Whether Their Lordships wish to see the fair copy
of the judgment ? No

4. Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950 or any Order made
thereunder ? No

5. Whether it is to be circulated to the Civil
Judge ? No

Appearance :

Mr B.J. Shelat for M/s. M.R. Bhatt & Co., Advocate for
the applicant.

M/s D.A. Mehta, R.K. Patel & B.D. Karia, Advocates for
the Assessee.

Coram : B.C. Patel & R.R. Jain, JJ.

Date of Decision : 26th July, 1996

Oral Judgment : (Per B.C. Patel, J.)

The Income-tax Appellate Tribunal has referred
the following questions for opinion of this Court.

2. So far as Income Tax Reference No. 161 of 1984
is concerned, the following two questions are referred
for the opinion of this Court.

1. Whether, on the facts and in the circumstances of
the case, the assessee was entitled to claim
exemption u/s. 11 of the I.T. Act, 1961 in

respect of the contribution of Rs.2,12,970/- made to B.M. Institute ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the interest received by the assessee on fixed deposits made with Shahibag Entrepreneurs was covered u/s. 13 (2) (a) of the Act, and therefore the assessee's claim for exemption u/s. 11 of the I.T. Act, 1961 was not affected.

3. So far as Income Tax Reference No. 56 of 1985 is concerned, the following questions are referred to this Court for opinion :

"1. Whether, on the facts and in the circumstances of the case, the assessee was entitled to claim exemption u/s. 11 of the Income-tax Act, 1961 in respect of the contribution of Rs. 2,73,102/- made to B.M. Institute ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the interest received by the assessee on Fixed Deposits made with Shahibaug Entrepreneurs Pvt. Ltd. was covered u/s. 13 (2)(a) and therefore, the assessee's claim for exemption u/s. 11 of the Income-tax Act, 1961 was not affected ?"

4. The assessee is a charitable trust and the relevant year for the assessment is 1978-79. The previous year ended on 31.3.1978. B.M. Institute is also a charitable entity to which out of the amounts paid, Rs. 2,12,970/- were claimed under section 11 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). It appears that on 1.4.1977 in the books of account of the assessee, there was an outstanding debit balance of Rs.5,29,676-08 and on 31.3.1978 there was a debit balance to the tune of Rs. 7,36,359-78. During the year Rs. 4,85,008-25 have been paid to B.M. Institute by the assessee. On 31.3.1978, the assessee passed a resolution resolving that out of the total amount of Rs. 9,87,743-50 advanced to B.M. Institute the amount of Rs. 2,12,969-54 be treated as contribution from the foundation to B.M. Institute and the same be earmarked for meeting the excess expenditure, in the income and expenditure account of the Institute as on 1.4.1977. The amount be adjusted against the deposit

balance in the income and expenditure account of the Institute as on 1.4.1977. Thus, it appears that during the year the assessee has paid in all Rs. 4,85,008-25. The Commissioner of Income-tax (Appeals) uphold the Income-tax Officer's action in disallowing deduction of Rs. 2,12,970/- under Sec. 11 of the Act. Against which, on appeal, the Tribunal held "once the assessee had shown that it had earned income of Rs. 2,16,304/- in the previous year relevant to the assessment year under appeal, we are not prepared to accede to the stand taken on behalf of the revenue that the assessee would not be entitled to claim exemption under section 11 of the Act in respect of contribution of Rs. 2,12,970/- made to B.M. Institute merely because the assessee had not paid in cash the said amount to the said Institute but it had passed necessary resolutions as well as entries in its books of accounts. For all these reasons, we have no hesitation in upholding the assessee's claim for exemption under sec. 11 of the Act in respect of contribution of Rs. 2,12,970/- made to B.M. Institute. The Income-tax Officer is, therefore, directed to modify the assessment accordingly".

Thus, on record there is a finding that the assessee earned income of Rs. 2,16,304/- in the previous year relevant to the assessment year under appeal and a sum of Rs. 4,85,008-25 has been paid during the year to B.M. Institute which includes the income earned by the assessee. The copy of account produced on the record clearly indicates that by different cheques or pay orders, the amount has been paid to B.M. Institute and a decision was taken that out of the total amount, only Rs. [2,12,967-54 be treated by way of contribution from the foundation to B.M. Institute. In our view, it would attract the provisions contained in Section 11 of the Act and in the facts and circumstances of case, the Tribunal is justified in taking the view and therefore, with regard to that question, we answer in favour of the assessee and against the revenue.

5. So far as the question No. 2 referred to this Court is concerned, the same is covered by the decision of this Court in the case of CIT vs. Sarladevi Sarabhai Trust No. 2, reported in 172 ITR 698. Considering various aspects, the Court has held as under :

"The Central Board of Direct Taxes Circular No.

45 dated September 2, 1970, clearly indicates that section 13 (2) (h) will cover only those cases in which investments are made by the assessee-trust in the capital of the concerns to

which section 13 (2) applies. The circular further indicates that in case of lendings by the trust, the provisions of clause (a) of sub-section (2) of section 13 will apply and not section 13 (2) (h) and any contrary interpretation would not be a harmonious interpretation of clauses (a) and (h) of sub-section (2) of section 13. It is, therefore, obvious that if at all, clause (a) of sub-section (2) of section 13 will apply and not clause (h) thereof, if it is shown that lending was without adequate security or adequate interest or both. Under these circumstances, if deposits are made by a trust in such concerns, such deposits will not be covered by section 13 (2) (h) and if at all, it is only section 13 (2) (a) which would apply to such deposits."

6. In the instant case, the Commissioner of Income-tax (Appeals) held that the interest received by the assessee on fixed deposits made with Shahibaug Entrepreneurs Pvt Ltd. was covered under section 13(2)(a) of the Act and the Tribunal has confirmed the decision rendered by the Commissioner of Income-tax (Appeals) and in view of the aforesaid decision, this question is required to be answered in favour of the assessee and against the revenue.

7. Thus, questions referred in Income Tax Reference No. 161 of 1984 are answered accordingly with no order as to costs.

8. In view of what we have stated in Income Tax Reference No. 161 of 1984, the questions referred in Income Tax Reference No. 56 of 1985 are required to be answered in favour of the assessee and against the revenue and accordingly the same are answered with no order as to costs.
